

\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
**Judgment delivered on : February 20, 2017**

+ Crl. A. No. 303/2001  
AZAD SINGH ALIAS TOONDA ..... Appellant  
Through: Ms. Avnish Ahlawat, Advocate

versus

STATE ..... Respondent  
Through: Mr. Panna Lal Sharma, Additional  
Public Prosecutor for the State

**CORAM:**  
**HON'BLE MR. JUSTICE P.S.TEJI**

**JUDGMENT**

**P.S.TEJI, J.**

1. Present appeal has been filed by the appellant being aggrieved by the judgment of conviction and order on sentence dated 09.04.2001 passed by the learned Additional Sessions Judge, Delhi convicting the appellant for the offence punishable under Section 307 of Indian Penal Code (hereinafter referred to as I.P.C.) and sentenced to undergo rigorous imprisonment for a period of five years with fine of Rs.3,000/- and in default of payment to further undergo rigorous imprisonment for one year.

2. The facts emerging from the record of the prosecution are that on 20.10.1995 at about 8.12 PM an information was received at Police Station Sultanpuri from PCR that one Dinesh had informed on telephone that one person was admitted in Jaipur Golder Hospital with bullet injury. The same was recorded as DD No.87-B. ASI Dharam

Pal Singh alongwith Constable Balbir reached the hospital and in the meantime another information was received at Police Station Sultanpuri at 8.50 PM from CMO, Jaipur Golden Hospital that Krishan Kumar has been admitted in hospital with bullet injury, the same was recorded at DD No.90-B and copy of the same was sent to ASI Dharam Pal for investigation. Injured - Krishan Kumar was declared fit for statement and accordingly his statement was recorded by ASI. The injured Krishan Kumar stated in his statement that he works as property dealer in Balbir Vihar and on 20.10.1995 when he was lying on a cot in a vacant plot in front of his house and Balraj and Bal Swaroop were also standing near him, then at about 6.40 PM accused Azad Singh @ Toonda alongwith three more persons came there. He also submitted that he knew Azad as he was earlier in his employment and because Azad had cheated him on selling of plots, therefore he dismissed him from the services and thereafter he had become inimical towards him. He further stated that on the day of occurrence Azad exhorted "AAZ SALE KO JINDA MUT CHHORO" and then one person fired at him but somehow he escaped. Thereafter, accused Azad exhorted 'MAIN AAZ JAAN SE MARKAR CHHOROONGA' and thereafter Azad fired at him and the bullet hit him on the left side of his neck. He shouted and started bleeding and accused Azad escaped from the spot with his accomplices. Naresh got him admitted in hospital. On the statement of the injured Krishan Kumar, the case under Section 307/34 of IPC was registered.

3. During investigation, empty cartridges were recovered from the

spot and from the hospital the bullet lead was received, both of which were seized. Site plan was prepared, statement of witnesses were recorded, case property was deposited in Malkhana and sent to FSL for expert opinion. The nature of injury on the person of Krishan Kumar was opined to be grievous by the doctor. The accused was arrested and charge sheet was filed in the Court after completion of investigation.

4. Charge under Section 307/34 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial.

5. To bring home the guilt of the appellants, the prosecution examined as many as 10 witnesses. They are, Dr. Gulam Asgar (PW-1); Head Constable Virender Singh (PW-2); Constable Balbir, (PW-3); ASI Puran Parsad (PW-4); Krishan Kumar (PW-5); Bal Swaroop (PW-6); Balraj (PW-7); Inspector Naval Kishore (PW-8); Constable Chand Kiran (PW-9); and ASI Dharam Pal (investigating officer) (PW-10).

6. Thereafter, entire incriminating material on record was put to the appellant, and his statement under Section 313 of Cr.P.C. was recorded, in which he specifically denied the charge. The appellant examined two witnesses in his defence being Lal Singh (DW-1) and Pawan Kumar (DW-2).

7. After considering the facts, evidence led and the material on record, the learned Additional Sessions Judge held the appellant guilty for an offence punishable under Section 307 of IPC vide judgment and

sentenced the appellant vide order on sentence, as indicated above.

8. During pendency of the present appeal, the sentence imposed upon the appellant was suspended vide order dated 14.05.2001. As per nominal roll of the appellant, he has already undergone the sentence for a period of 1 year, 8 months and 11 days, out of the sentence of rigorous imprisonment for 5 years.

9. Argument advanced by the learned counsel for the appellant is that there are material contradictions in the testimony of witnesses such as, as per prosecution, the case was registered under Section 307/34 of IPC but neither the other accomplices were arrested nor the alleged weapon of offence was recovered. It is further urged that the appellant is handicapped and does not have a thumb or finger of his right hand and was not able to hold the fire arm. The injured Krishan Kumar was brought to the hospital by his brother and not by any eye witnesses and that too in a conscious condition, still they have not disclosed the name of the appellant and other three associates and when the name of the appellant was known to the injured and his brother, then he should have given the same to the doctor in the MLC. It is further urged that none of the persons who allegedly fired on the injured were known to the injured and the witnesses and injured have falsely implicated the petitioner in connivance with the investigating officer of the case, who is related to him. It is further argued that the doctor (PW-1) has described the injury as simple and he had only stated that injury could have definitely endangered the life of patient if timely medical attention was not provided and that submission cannot

be termed as injury being grievous or that the appellant had intention to cause death of the injured.

10. Per contra, learned Additional Public Prosecutor for the State has submitted that there is specific allegation of the injured witness – Krishan Kumar to the effect that it was the appellant who had fired the gun shot on him which hit on left side of his neck. Apart from the injured witness, there are two eye witnesses who have supported the case of prosecution. So far as the contradictions cited on behalf of the appellant are concerned, the same have already been dealt with by the learned Additional Sessions Judge. Therefore, the judgment and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order, therefore, the same is not liable to be interfered with.

11. I have heard the submissions made on behalf of both the sides and also gone through the evidence as well as material placed on record. The important witnesses in the present case are Injured - Krishan Kumar (PW-5), Eye-witnesses – Bal Swaroop (PW-6), Balraj (PW-7) and Dr. Gulam Asgar (PW-1).

12. The injured – Krishan Kumar (PW-5) in his testimony had deposed that the appellant – Azad Singh was known to him and previously employed with him. PW-5 had terminated the services of the appellant because he had sold three plots by fabricating his signatures. He further deposed in his statement that the appellant – Azad Singh exhorted his accomplice that “*sale ko aaz zinda mat*

*chhoro*". Thereafter the said person opened fire on the injured but did not strike him. He further deposed that the appellant – Azad Singh uttered the words "*aaz zan se mar kar chhorunga*". Appellant – Azad Singh was holding a fire arm in his hand, fired at PW5 and the bullets struck on the back portion of his head above the neck. Thereafter he ran to save himself and in the meantime the appellant and his associates escaped. Brother of PW5, namely, Narender reached the spot and took him to Jaipur Golden Hospital. Statement of PW5 was recorded by the police, which is Ex. PW-5/A.

13. To corroborate the injuries, Dr. Gulam Asgar (PW-1) had deposed that the patient (Krishan Kumar) was admitted in the hospital and was treated by him, along with two other doctors of his unit. The case sheet (Ex.PW-1/B) of the injured was prepared by him. He further deposed that the patient was discharged on 24.10.1995, since there was no fracture and the patient was discharged in five days after treatment. Dr. Gunjan had opined the injury to be grievous. He further deposed that a bullet was impacted and pellets were not there and if the patient had not been given proper medical attention then he would have died.

14. The other prosecution witness is the eye-witness Bal Sarup (PW-6), who had corroborated the testimony of injured Krishan Kumar (PW5). PW6 had deposed in his statement before the court that on the date of incident, Krishan Kumar was relaxing on a cot in an open plot in front of his office. He was passing by that side and stopped to sit with Krishan Kumar. After sometime 3-4 persons came

there and one of them was appellant - Azad Singh. He did not know the other persons, one of whom exclaimed that Krishan Kumar should not be spared. He fired a shot from pistol or revolver on Krishan Kumar, but somehow he escaped. Thereafter, the appellant – Azad Singh exhorted that “*ish ko jinda nahi chhodana hei jan se marna hei*” and fired a shot which struck on the lower back portion of the head above the neck of Krishan Kumar. He further deposed that he ran away from the spot to save his life and returned after 15 minutes alongwith Narender Kumar (brother of the injured) and took the injured Krishan Kumar to hospital.

15. Another eye-witness of the case Bal Raj (PW-7) has also corroborated the testimony of injured Krishan Kumar (PW5) and another eye witness Bal Sarup (PW6). PW7 had deposed he had seen the incident from a distance of about 10 feet. Four persons including the appellant had come on foot. He further deposed that he had seen revolvers only in the hands of two persons and after firing of first and second shot, he ran away. Second shot hit Krishan Kumar, which was shot by the appellant. He further deposed that the appellant – Azad Singh was known to him as he was with Krishan Kumar and was dealing in plots belonging to Krishan Kumar.

16. For ready reference, section 307 of the IPC reads as follows:

*"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be*

*punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned."*

17. This court is of the considered opinion that for holding a person guilty for the offence under Section 307 of IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section.

18. This court is further of the view that whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not the nature of

injury.

19. From a careful scrutiny of the case in hand, the identity of the appellant, who had fired the bullet shot, is established by the deposition of injured witness – Krishan Kumar. In the considered opinion of this court the evidence of injured witness is sufficient to hold the appellant guilty for the offence with which the appellant is charged. In *Abdul Sayeed vs State Of M.P.*, (2010) 10 SCC 259, the Hon'ble Apex Court, while dealing with the reliability of testimony of injured witness, has held as under:

*“The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”*

20. This court further finds the deposition of injured witness has duly been corroborated by the eye-witnesses Bal Sarup (PW-6) and Balraj (PW-7) regarding the identity of the appellant as well as firing of a gunshot on the injured – Krishan Kumar. Even from the

deposition of Dr. Gulam Asgar (PW-1) it has been established that the injured Krishan Kumar sustained gun shot injury. As per the deposition of the doctor, the injury could have definitely endangered the life of patient, if timely medical attention had not been given to him.

21. From the aforesaid deposition of injured witness – Krishan Kumar (PW-5), the eye-witnesses Bal Sarup (PW-6) and Balraj (PW-7) coupled with the opinion of Dr. Gulam Asgar (PW-1), it is crystal clear that the appellant – Azad Singh had fired on the injured with intention to kill him and the bullet hit the injured on the left side of his neck.

22. A cumulative consideration of the evidence regarding identity of the accused, coupled with the gun shot on the injured – Krishan Kumar with intention to kill him, this court finds that the prosecution has successfully proved the ingredients of Section 307 of IPC beyond all reasonable doubts.

23. In the light of the aforesaid discussions and facts and circumstances of this case, this court does not find any illegality or infirmity in the impugned judgment and order on sentence dated 09.04.2001. Accordingly, the same are upheld and the appeal filed by the appellant is dismissed.

24. The appellant is accordingly directed to surrender before the trial court concerned within a period of 15 days to serve the remainder of sentence of imprisonment.

25. A copy of this order be sent to the Trial Court for information and necessary steps.

26. With aforesaid directions, the present appeal is disposed of.

**(P.S.TEJI)**  
**JUDGE**

**FEBRUARY 20, 2017**  
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